

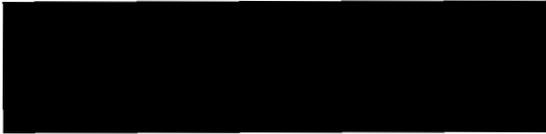


U.S. Citizenship  
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FILE:



Office: NEW YORK, NEW YORK

Date:

**MAY 30 2008**

MSC 01 324 61232

IN RE:

Applicant:



APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained, or if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director also indicated that the applicant failed to provide sufficient, credible evidence that she was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence and physical presence in the United States during the statutory periods.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

- (i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

*See also* 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also states that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually

and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.<sup>1</sup>

Here, the submitted evidence is not relevant, probative and credible.

The record indicates that on or near August 13, 1991, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On August 20, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains several statements and affidavits relating to the applicant’s claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. The record also contains copies of pages from the applicant’s passport which indicate that she was outside the United States for much of the statutory period. For instance, the stamps on the passport pages indicate:

1. The applicant entered Jamaica on November 12, 1981 and did not exit Jamaica again until March 31, 1982.
2. The applicant entered Jamaica on April 5, 1982 and did not exit Jamaica again until June 1, 1982.
3. The applicant entered Jamaica on June 3, 1982 and did not exit Jamaica again until November 8, 1982.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

There is no contemporaneous evidence in the record directly relevant to the applicant's claim that she resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988.

On July 14, 2004, the director issued the Form I-72, Request for Evidence, on which she asked the applicant to furnish documentary evidence of her continuous residence in the United States during the statutory period. On October 14, 2004, the applicant provided a response to the Form I-72. The response included certain affidavits and statements that relate to the applicant's claim that she resided continuously in the United States during the statutory period.

On March 1, 2006, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous residence in the United States during the statutory period. In the NOID, the director stated that she intended to deny the application because entry and departure stamps in the applicant's passport documented the following. The applicant resided in Jamaica November 12, 1981 through March 31, 1982, a period that includes over 90 days of the statutory period. The applicant resided in Jamaica from April 5, 1982 through June 1, 1982, a period that includes over 50 days of the statutory period. The applicant also resided in Jamaica from June 3, 1982 through November 8, 1982, a period that includes over 150 days of the statutory period. The director determined that these absences from the United States represent a clear break in any residency that the applicant may have had in the United States. Also, these absences are in excess of 45 days each and over 180 days in the aggregate.

In the rebuttal to the NOID dated March 30, 2006, the applicant submitted additional affidavits and statements that indicate that the applicant resided continuously in the United States during the statutory period.

On April 17, 2006, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel asserted that the applicant had established continuous residence in the United States in unlawful status during the statutory period. Counsel also submitted copies of affidavits and statements that indicate that the applicant was in the United States during the statutory period.

On the appeal form, counsel also indicated that he would file a brief or additional evidence within 90 days. On May 7, 2008, the AAO sent counsel a facsimile transmission inquiring whether he had ever submitted such additional evidence and requesting that a copy of such brief be sent by facsimile or mail to the AAO within five business days. In response, counsel resubmitted copies of statements already in the record and a copy of an envelope addressed to the applicant in the United States and postmarked after the statutory period.

On the Form I-687 which the applicant signed under penalty of perjury on August 13, 1991, the applicant stated that between January 1, 1982 and the date that she signed that form, she was only outside the United States ten days, June 15, 1987 through June 25, 1987. The affidavits and statements submitted into the record tend to corroborate this claim. Yet, as noted by the director, the copies of pages of the applicant's passport in the record document that the applicant resided in Jamaica: from November 12, 1981 through March 31, 1982; from April 5, 1982 through June 1, 1982; and from June 3, 1982 through November 8, 1982. These represent absences from the United States in excess of 45 days, and over 180 days in the aggregate. There is nothing in the record to indicate that these absences might be excused because the applicant was forced to remain outside the United States beyond 45 days during each of these absences due to *emergent reasons*. See 8 C.F.R. § 245a.15(c)(1).

The passport pages in the record also document that the applicant made many other entries into and exits from the United States during the statutory period beyond the one ten-day absence from the United States in June 1987 listed on the Form I-687. For instance, the passport pages specify that the applicant entered the United States on April 16, 1985, July 1, 1985, August 23, 1985, November 18, 1985, January 6, 1986 and December 15, 1986.

These discrepancies in the evidence cast serious doubt on all the evidence in the record. This in turn casts serious doubt on the applicant's claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that she resided continuously in the United States during the statutory period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The AAO finds that the various statements and affidavits in the record which purport to substantiate the applicant's continuous residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States during the statutory period.

The applicant failed to provide contemporaneous evidence that might be considered independent, objective evidence of her having resided continuously in the United States throughout the statutory period.<sup>2</sup>

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.

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<sup>2</sup> The record does include envelopes addressed to the applicant in the United States and postmarked after the statutory period. These are not relevant to the applicant's claim that she resided continuously in the United States throughout the statutory period.